

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 3:18-cv-46-CRW-RAW
)	
v.)	
)	
CARL CLEVE & SON, INC.,)	
KELCHA, INC.,)	
IOWA DEPARTMENT OF REVENUE,)	
IOWA WORKFORCE DEVELOPMENT,)	
RICHARD I. VESOLE 401(K) PROFIT)	
SHARING PLAN, and)	
DBL INVESTMENTS, LLC,)	
)	
Defendants.)	
_____)	

ORDER OF SALE

This Court entered a final judgment in this action on May 23, 2019 (ECF No. 31), in favor of plaintiff United States and against defendant Carl Cleve & Son, Inc. for unpaid federal employment and unemployment tax liabilities. The Court determined that the United States has valid and subsisting federal tax liens on all property and rights to property of Carl Cleve & Son, Inc., including the real property held by Carl Cleve & Son's alter ego, defendant Kelcha, Inc., which is located at 330 W. 5th Street, Davenport, Iowa (hereinafter, the "Davenport Property.") The judgment also ordered that the federal tax liens associated with Carl Cleve & Son's liabilities be enforced with a judicial sale of the land, along with all improvements, buildings, and appurtenances thereon, of the Davenport Property. The Davenport Property is comprised of three lots, which are legally described as:

The South Fifty-two (52) of the West Half (West ½) of Lot 1 and the East Half (East ½) of Lot 1, all of Lot Two (2) and the West Thirty (30) feet of Lot Three in Block Thirty Two (32), Original Town, now City, of Davenport Iowa.

The Court now **ORDERS** that the Davenport Property shall be sold, pursuant to 26 U.S.C. § 7403(c) and 28 U.S.C. §§ 2001 and 2002, in order to collect the unpaid federal tax liabilities as follows:

1. The Internal Revenue Service (“IRS”) Property Appraisal and Liquidation Specialists (“PALS”) are authorized to offer for public sale and to sell the Davenport Property.

2. **Terms and Conditions:** The terms and conditions of the sale are set forth below.

a. The sale of the Davenport Property shall be by public auction to the highest bidder, free and clear of all rights, titles, claims, liens, and interests of all parties to this action, including the plaintiff United States and the defendants Carl Cleve & Son, Inc., Kelcha, Inc., DBL Investments, LLC, Richard I. Vesole 401(k) Profit Sharing Plan, Iowa Department of Revenue, and Iowa Workforce Development, and any successors in interest or transferees of those parties.

b. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Davenport Property, and easements, restrictions, and reservations of record, if any.

Sale Location

c. The sale shall be held either at the courthouse of the county or city in which the Davenport Property is located or on the Davenport Property’s premises.

Notice of Sale

d. The PALS shall announce the date and time for sale.

e. Notice of the sale shall be published once a week for at least four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in

Scott County, Iowa and, at the discretion of the PALS, by any other notice or advertisement that the PALS deems appropriate. The notice of the sale shall contain an adequate description of the Davenport Property but need not contain the full legal description, and shall contain the material terms and conditions of sale set forth in this Order of Sale.

f. The Davenport Property shall be offered for sale “as is.”

Redemption

g. The sale shall be made without any right of redemption.

Minimum Bid

h. The PALS shall set, and may adjust, the minimum bid. If the minimum bid is not met or exceeded, the PALS may, without further permission of this Court, and under the terms and conditions in this Order, hold a new public sale, if necessary, and adjust the minimum bid.

Payment of Deposit and Balance

i. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by money order, certified check, or cashier’s check made payable to the Clerk of the United States District Court for the Southern District of Iowa, a deposit in an amount between five (5) and twenty (20) percent of the minimum bid as specified by the PALS in the published notice of sale. Upon receipt, the PALS will deposit the funds with the Clerk of this Court. Before being permitted to bid at the sale, potential bidders shall display to the PALS proof that they are able to comply with this requirement. No bids will be accepted from any person(s) who have not presented proof that, if they are the successful bidders(s), they can make the deposit required by this Order.

j. The successful bidder(s) shall pay the balance of the purchase price for the Davenport Property within forty-five (45) days following the date of the sale. The money order, certified check, or cashier's check shall be made payable to the Clerk of the United States District Court for the Southern District of Iowa, and shall be given to the PALS who will deposit the funds with the Clerk of this Court. If the bidder fails to fulfill this requirement, the sale shall be treated as null and void, and the deposit shall be forfeited and disbursed pursuant to further order of this Court, first to cover the expenses of the sale, then any amount remaining to be applied to the judgment for the federal tax liabilities entered in this case. The Davenport Property shall be again offered for sale under the terms and conditions of this Order or, in the alternative, sold to the second highest bidder, at the sole discretion of the United States. The successful bidder(s) at the new sale or second highest bidder, as the case may be, shall receive the Davenport Property free and clear of all rights, titles, claims, liens, and interests of the defaulting bidder(s).

k. The Clerk of this Court is directed to accept the deposits and the balance of the proceeds of the sale and deposit them into the Court's registry for distribution as provided for pursuant to further order of this Court.

Confirmation of Sale

l. The sale of the Davenport Property shall be subject to confirmation by this Court. On confirmation of the sale, ownership and possession of the Davenport Property shall transfer to the successful bidder(s), and all interests in, liens against, and titles and claims to, the Davenport Property that are held or asserted by the parties to this action are discharged and extinguished.

m. After the confirmation of the sale, the IRS shall execute and deliver a deed under the authority of this Court conveying the Davenport Property, effective as of the date on which this Court confirms the sale, to the successful bidder(s). Also, after this Court confirms the sale, and on receipt of the deed from the successful bidder, the Recording Official of Scott County, Iowa, shall cause the transfer of the Davenport Property to be reflected upon that county's register of title. The successful bidder(s) shall pay, in addition to the amount of the bid, any county or local documentary stamps and registry fees as provided by law.

3. **Preservation of the Davenport Property:** Up until the date on which this Court confirms the sale of the Davenport Property, Carl Cleve & Son, Inc. and Kelcha, Inc. shall take all reasonable steps necessary to preserve the Davenport Property (including all buildings, improvements, fixtures and appurtenances on the Davenport Property) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the Davenport Property, and Carl Cleve & Son, Inc., Kelcha, Inc., and all occupants of the Davenport Property shall neither commit waste against the Davenport Property, nor cause or permit anyone else to do so. Up until the date on which this Court confirms the sale of the Davenport Property, the defendants in this case shall do nothing that tends to reduce the value or marketability of the Davenport Property, nor shall they cause or permit anyone else to do so. Such defendants shall not record any instrument, publish any notice, or take any other action (such as running newspaper advertisements, posting signs, or making internet or social media postings) that may directly or indirectly tend to adversely affect the value of the Davenport Property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so. If the Davenport Property is destroyed before the date on which this Court confirms the sale of the Davenport Property and either Carl Cleve & Son,

Inc. or Kelcha, Inc. is entitled to insurance proceeds, the insurance proceeds shall be paid into the registry of this Court. Violation of this paragraph shall be deemed a contempt of court and punishable as such.

4. **Vacating the Davenport Property:** All persons occupying the Davenport Property shall vacate the Davenport Property permanently by the earlier of either: (1) November 4, 2019, or (2) ten business days after receiving written notice from the U.S. Department of Justice, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Davenport Property).

If any person fails or refuses to vacate the Davenport Property by the date specified in this Order, or attempts to re-enter the Davenport Property thereafter, the PALS is authorized to coordinate with the United States Marshals Service to take all actions that are reasonably necessary to have those persons ejected or excluded, in particular:

a. The United States Marshals Service is authorized to and directed to take any and all necessary actions, including but not limited to the use of reasonable force, to enter and remain on the premises, which includes, but is not limited to, the land, the buildings, vehicles, and any structures located thereon, for the purpose of executing this Order.

b. The United States Marshals Service is further authorized and directed to arrest and/or evict from the premises any and all persons who obstruct, attempt to obstruct, or interfere or attempt to interfere, in any way with the execution of this Order.

5. **Abandoned Personal Property:** Any personal property remaining on the Davenport Property thirty (30) days after the date of this Order is deemed forfeited and abandoned, and the PALS is authorized to dispose of it in any manner they see fit, including sale. If the abandoned personal property is sold, the proceeds of the sale are to be deposited into the registry of this

Court and disbursed pursuant to further order of this Court, first to cover the expenses of the sale, then any amount remaining to be applied to the judgment for the federal tax liabilities entered in this case or as otherwise ordered. Money orders and checks for the purchase of the personal property shall be made payable to the Clerk of the United States District Court for the Southern District of Iowa and the Clerk of the Court is directed to accept cash, money orders, and checks, and deposit such items into the Court's registry for distribution as provided for pursuant to further order of this Court.

6. **Forwarding Address:** No later than two business days after vacating the Davenport Property as required by the deadline set forth in paragraph 4, above, Carl Cleve & Son, Inc. and Kelcha, Inc. or their agent shall notify counsel for the United States of a forwarding address where their representatives can be reached. Notification shall be made by contacting the U.S. Department of Justice Tax Division's trial attorney, Samuel Robins, via email at: Samuel.P.Robins@usdoj.gov.

7. **Access to the Davenport Property:** Up until the date on which this Court confirms the sale of the Davenport Property, the IRS, the PALS, and their representatives are authorized to have free and full access to the Davenport Property in order to take any and all actions necessary to preserve and market the Davenport Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the Davenport Property.

8. **Claims:** After the Court confirms the sale of the Davenport Property, the sale proceeds deposited with the Clerk of this Court shall be distributed as follows:

- a. First, to the PALS for the expenses of the sale, including any expenses incurred to secure or maintain the Davenport Property pending the sale and confirmation by the Court;
- b. Second, to Scott County for any outstanding real property taxes accrued through the date of the sale;
- c. Third, to DBL Investments, LLC and the Richard I. Vesole 401(k) Profit Sharing Plan to satisfy each defendant's fifty percent interest in the outstanding balance on the promissory note secured by the Davenport Property;
- d. Fourth, the remaining sale proceeds shall be distributed to the United States, the Iowa Department of Revenue, and Iowa Workforce Development by order of priority of these parties' liens set forth in the chart below:

Priority	Taxing Authority	Tax Period	Assessment Date	Lien Recording Date	Amount Due ¹
1.	United States	12/31/2007	3/31/2008	6/16/2008	61,408.91
2.	United States	3/31/2008	8/18/2008	11/5/2008	55,693.39
3.	United States	6/30/2008	12/22/2008	2/12/2009	38,742.47
4.	Iowa Workforce Development	2008	2/24/2009	4/3/2009	10,514.48
5.	United States	9/30/2008	4/20/2009	5/18/2009	46,622.59
6.	United States	12/31/2008	6/1/2009	6/22/2009	61,541.81
7.	United States	3/31/2009	6/15/2009	7/13/2009	49,330.80
8.	Iowa Workforce Development	2009	9/12/2009	10/2/2019	9,308.65
9.	United States	6/30/2009	9/28/2009	10/23/2009	43,580.05
10.	United States	9/30/2009	12/28/2009	2/1/2010	6,855.15
11.	United States	6/30/2010	4/25/2011	3/28/2016	43,579.54
12.	United States	12/31/2010	4/25/2011	3/28/2016	39,730.74

¹ For the United States, the amount due is as of May 15, 2019. Interest and other statutory additions continue to accrue as a matter of law. For Iowa Workforce Development and Iowa Department of Revenue, the amounts due are as of the assessment dates.

13.	United States	3/31/2011	10/24/2011	11/18/2011	38,556.66
14.	United States	6/30/2011	10/24/2011	11/18/2011	42,751.83
15.	United States	9/30/2011	1/2/2012	2/21/2012	38,962.39
16.	United States	9/30/2012	12/3/2012	1/7/2013	392.54
17.	United States	12/31/2012	3/4/2013	3/7/2014	388.56
18.	United States	3/31/2013	9/2/2013	3/7/2014	580.25
19.	Iowa Dep't of Revenue	3/31/2014	7/8/2014	7/10/2014	3,486.00
20.	Iowa Dep't of Revenue	6/30/2014	11/20/2014	11/24/2014	2,798.41
21.	Iowa Dep't of Revenue	9/30/2015	1/12/2016	3/15/2016	4,816.00
22.	Iowa Dep't of Revenue	12/31/2015	4/12/2016	6/14/2016	2,845.92

IT IS SO ORDERED this 18th day of July, 2019.

Charles R. Wolle

CHARLES R. WOLLE
United States District Judge